

I. INTRODUCTION

17 The Securities and Exchange Commission (“SEC”) brought this civil enforcement action
18 against Carl W. Jasper (“Defendant”) alleging, *inter alia*, violations of § 10(b) of the Securities and
19 Exchange Act of 1934 and various SEC rules. The SEC alleges that Defendant unlawfully
20 backdated options grants and submitted false financial statements for Maxim Integrated Products,
21 Inc. (“Maxim” or the “Company”).

II. BACKGROUND

23 A. **Evidence Presented at Trial**

24 || 1. Defendant's Participation in Maxim's Backdating Scheme

25 Evidence at trial showed that from at least 2000 through 2005, Maxim engaged in a regular
26 practice of making in-the-money stock-option grants to employees and directors without reflecting
27 them as expenses in SEC filings. As the Company's Chief Financial Officer ("CFO"), Principal

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1 Accounting Officer, and a Certified Public Accountant, Defendant played a central role in carrying
2 out Maxim's backdating scheme.

3 The SEC's evidence demonstrated that on numerous occasions, Defendant actively suggested
4 to the Company's CEO, Jack Gifford, historical low-points in Maxim's stock price to be used after
5 the fact as stock-option grant dates. Examples of communications between Defendant and Gifford
6 in which Defendant suggested taking advantage of low stock prices, even though the stock-options
7 were not actually granted on those dates, are as follows:

- 8 (1) Defendant's response to a memo from Gifford asking about the lowest price Maxim
9 could use for an option grant in the first quarter of fiscal year 2004, which stated,
“The best price is the first day of the quarter—June 30, 2003. The price was \$34.10 on
that date. . . . I have attached a listing of Maxim's closing stock prices for your
reference.” (Trial Exs. 56, 115.)
- 11 (2) A December 28, 2001 memo from Defendant to Gifford suggesting dates for option
12 grants to several classes of employees, which stated, “Given the run up in our stock
price this quarter, I would like to propose the following to set the option price for
Q202 activity. . . .” (Trial Ex. 61.)
- 13 (3) A memo from Defendant to Gifford regarding an option grant for Maxim employee
14 Dave Carron, which states, “But I would like to grant him an option now at the Oct
price so that he gets a favorable price. I believe this will go a long way in ensuring
he stays with Maxim. Please consider and approve the attached grant proposal.”
(Trial Ex. 81.)
- 16 (4) An August 2, 2000 memo from Defendant to Gifford regarding using a low-stock
17 price for a hire-on grant, which stated, “Typically we default to using everyone's hire
on date as the date to grant and set the price for the hire on option grant. . . . If you
18 want Brian to get the lower price, please sign the attached memo and I will see that it
is done. We should not be doing this as a practice as the accounting rules would
19 require a comp charge but for one person we will just get it done.” (Trial Ex. 67.)
- 20 (5) A November 21, 2002 memo from Defendant to Gifford suggesting that he make the
21 Board's 2002 option grant on October 10. (Trial Ex. 78.)
- 22 (6) A January 4, 2000 memo from Defendant to Gifford listing a range of low stock
23 prices from October 1999 and suggesting that Gifford make the Director grant on
October 21 “to achieve [his] objective.” (Trial Ex. 34.)

24 Additionally, the SEC presented witness testimony to prove that Defendant was aware of
Maxim's backdating practices. Maxim stock administration employee Sandy Wong testified that
25 Maxim used historical stock price information to pick low stock prices as recommended exercise
26 prices for option grants to employees. Maxim's stock administration manager, Sheila Raymond,
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1 testified, “The process at the company, the way the company worked was to grant options at the
2 lowest possible price without taking as-without taking expense for it. That’s just the way the
3 company was.” (Trial Tr. 607:1-608:24.) Ms. Raymond further testified that she did not draft the
4 grant approval memoranda on the dates listed in the memoranda. Instead, she obtained the grant
5 date and price information either verbally from Defendant, or by selecting the low price for the
6 quarter from a stock price report. (See id. at 612:14-613:21.) At the end of each quarter, Ms.
7 Raymond delivered the backdated memoranda to Defendant personally. (See id. at 613:23-615:8.)

8 **2. Defendant’s Misrepresentations**

9 As CFO and Principal Accounting Officer, Defendant was ultimately responsible for the
10 accuracy of Maxim’s financial statements and its internal controls. (Trial Tr. 447:7-448:7, 488:2-
11 489:11, 961:8-964:19.) Defendant assured the Board that Maxim’s option granting process was
12 “well-documented by . . . his group” and that he “closely monitor[ed] the closing price of Maxim
13 stock each day.” (See id. at 1166:8-1172:22.) Despite his knowledge of the proper accounting
14 practices for backdated stock options, during Defendant’s tenure as CFO, Maxim never recorded the
15 applicable compensation expense in its financial statements.

16 Due to Maxim’s failure to properly account for backdated stock options in its financial
17 statements, all of the annual and quarterly reports that the Company submitted to the SEC that
18 Defendant had signed and certified were false and had to be restated.¹ Defendant also signed ten
19 management representation letters, which assured auditors that Maxim’s financial statements
20 complied with generally accepted accounting principles. (Trial Exs. 151-52, 495-501, 504.)

21 **3. Defendant’s Mental State**

22 Evidence at trial showed that Defendant was cognizant that according to generally accepted
23 accounting principles, in-the-money stock-option grants should be recorded as compensation

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25 ¹ (Trial Tr. 528:6-530:9, 532:20-533:3, 533:24-534:4, 536:12-539:20, 544:9-546:8
26 (testimony of Alan Hale, Maxim Interim CFO); Trial Tr. 808:5-810:22, 817:1-818:19, 852:16-25
27 (testimony of Lisa Portnoy, former Maxim auditor); Trial Tr. 951:20-953:16, 954:18-955:9, 956:2-
957:10, 959:17-960:12 (testimony of Scott Angel, current Maxim auditor); see also Trial Exs. 89-92
(Maxim’s Form 10-K annual reports), 457 (Restatement).)

1 expenses.² Despite Defendant's knowledge, however, the SEC presented evidence demonstrating
 2 that Defendant intentionally concealed Maxim's backdating practices from Board members. Two of
 3 those Board members testified that when they asked Defendant about the Company's option
 4 granting practices, he told them that Maxim never backdated options. (See Trial Tr. 479:10-836:16,
 5 484:24-486:14 (testimony of Kip Hagopian); Trial Tr. 1166:5-17, 1170:20-1171:11 (testimony of
 6 James Bergman).)

7 **B. Procedural History and Trial**

8 The SEC's claims against Defendant were tried to a jury. After close of the evidence,
 9 Defendant made a timely Motion for Judgment as a Matter of Law pursuant to Federal Rule of Civil
 10 Procedure 50(a).³ The Court took Defendant's Rule 50(a) Motion under submission and submitted
 11 the case to the jury with a Verdict form that asked their findings as to each claim. The Verdict form
 12 returned by the jury was as follows:

CLAIM	VERDICT/AWARD
Fraud in Connection with the Purchase or Sale of Securities	Verdict in favor of the SEC
Use of Instrumentalities in Interstate Commerce to Commit Securities Fraud	Verdict in favor of the SEC
Obtaining Money or Property by Means of Securities Fraud	Verdict in favor of Defendant
False Periodic Reports—Aiding and Abetting	Verdict in favor of the SEC
False Books and Records—Aiding and Abetting	Verdict in favor of the SEC
Inadequate Internal Accounting Controls—Aiding and Abetting	Verdict in favor of the SEC

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 23 ² (See, e.g., Trial Ex. 3 (letter from Defendant describing "the accounting principle guiding
 24 the expensing of options by the International Accounting Standards Board"); Ex. 41 (describing
 25 Defendant as a "major contributor[]" to "a letter of comment on [the Financial Accounting Standards
 26 Board's] proposals on stock-based compensation"); Ex. 49 (letter from Defendant to Gifford, stating
 27 with regard to a Company stock-bonus program, "As long as the options are granted at fair market
 value on the date the number of shares, vesting terms, and other pertinent option information is
 known, then we do not need to record any compensation expense related to the option.").

28 ³ (Defendant Carl W. Jasper's Notice of Motion for Judgment as a Matter of Law, hereafter,
 29 "Rule 50(a) Motion," Docket Item No. 233.)

1	Circumventing Internal Accounting Controls	Verdict in favor of Defendant
2	Falsifying Books and Records	Verdict in favor of the SEC—Defendant acted deliberately
3	False Statements of Omissions to Accountants and Auditors	Verdict in favor of the SEC
4	False Certifications	Verdict in favor of the SEC
5	False Proxy Statements	Verdict in favor of Defendant

7 Defendant timely filed the following motions: (1) Renewed Motion for Judgment as a Matter
 8 of Law or, in the Alternative, for a New Trial,⁴ (2) Motion for Judgment or New Trial based on
 9 government misconduct,⁵ and (3) Request for Judgment Based on Estoppel Defenses.⁶ The SEC
 10 timely filed a Motion for Permanent Injunction, Other Relief and Final Judgment. (hereafter,
 11 “SEC’s Motion,” Docket Item No. 265.)

12 The Court conducted a hearing on July 12, 2010. This Order disposes of all pending post-
 13 trial Motions.

14 III. STANDARDS

15 Federal Rule of Civil Procedure 50 governs motions for judgment as a matter of law
 16 (“JMOL”). Under Rule 50(a), “[i]f a party has been fully heard on an issue during a jury trial and
 17 the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for
 18 the party on that issue, the court may: (A) resolve the issue against the party; and (B) grant a motion
 19 for judgment as a matter of law against the party on a claim or defense” Fed. R. Civ. P.
 20 50(a)(1); see also Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 149 (2000). The
 21 motion must be made before the case is submitted to the jury. Fed. R. Civ. P. 50(a)(2).

22 If, as was the case here, the court does not grant a motion for judgment made under Rule
 23 50(a), the court is considered to have submitted the action to the jury subject to the court’s later

25 ⁴ (hereafter, “Defendant’s Renewed Motion for JMOL,” Docket Item No. 260.)

26 ⁵ (hereafter, “Defendant’s Motion Re Misconduct,” Docket Item No. 263.)

27 ⁶ (hereafter, “Defendant’s Motion Re Estoppel,” Docket Item No. 259.)

deciding the legal questions raised by the motion. Fed. R. Civ. P. 50(b). The standard for granting a renewed post-verdict JMOL is the same as the standard for granting a pre-submission JMOL under Rule 50(a). Winarto v. Toshiba Am. Elecs. Components, Inc., 274 F.3d 1276, 1283 (9th Cir. 2001). A party is entitled to judgment as a matter of law if, under the governing law, there can be but one reasonable conclusion as to the verdict, and that is, a finding in favor of the moving party. (Id.) The court must draw all reasonable inferences in favor of the nonmoving party and should review all evidence in the record. Reeves, 530 U.S. at 150.

IV. DISCUSSION

A. Defendant's Motions for Judgment or a New Trial

Defendant moves for judgment, or in the alternative, a new trial, on multiple grounds. Defendant's contentions can be divided into the following general categories: (1) the SEC did not prove that each of the nineteen specific grants at issue were improperly backdated, (2) the SEC's presentation as to evidence of materiality caused juror confusion, (3) the SEC's reliance on Maxim's September 2008 Restatement was improper, (4) the jury was improperly allowed to make adverse inferences based on Defendant's invocation of the Fifth Amendment, (5) the expert testimony of several SEC witnesses was insufficient to prove liability, (6) there was insufficient evidence to support any of the SEC's negligence claims, (7) the SEC on several occasions at trial misled the jury or made improper statements to the jury, and (8) the SEC should be judicially estopped from telling the jury that it sued Gifford for fraud when its Complaint only alleged negligence, or "non-scienter fraud," against Gifford. The Court addresses each of these general categories of contentions in turn.

1. Proof of Backdating as to Nineteen Specific Grants

Defendant contends that in pre-trial discovery, the parties agreed to limit the case to nineteen specific option grants, and that the SEC failed at trial to prove that Maxim backdated any of those nineteen specific grants. (Defendant's Renewed Motion for JMOL at 3-5.) Defendant further contends that the evidence on which the SEC relied to prove backdating was insufficient as to the nineteen grants at issue because Maxim's Restatement covered a much wider temporal scope than Defendant's tenure as CFO, and the Equity Edge data at most showed the grant date and stock price

1 on particular dates. (*Id.*) The SEC responds that it was not required to prove backdating as to each
2 individual grant, and there is no authority to support Defendant's contention that the Court erred by
3 instructing the jury that it could consider the nineteen grants in the aggregate.⁷

4 In light of the evidence of Maxim's widespread backdating practices, the Court finds that the
5 jury could reasonably conclude that Maxim backdated the nineteen option grants at issue.
6 Accordingly, the Court DENIES Defendant's Motion for JMOL or a new trial on that basis.

7 **2. Evidence of Materiality**

8 Defendant contends that the SEC's closing argument confused the jury with respect to the
9 appropriate standard for materiality because it focused on a general accounting perspective rather
10 than whether the alleged intrinsic value of the nineteen grants at issue would have been important to
11 investors. (Defendant's Renewed Motion for JMOL at 10.) Defendant further contends that the
12 SEC improperly relied on Maxim's failure to follow generally accepted accounting principles
13 ("GAAP") to prove materiality. (*Id.*) The SEC responds that it introduced at trial evidence, beyond
14 failure to follow GAAP, sufficient to show that Defendant's misrepresentations regarding Maxim's
15 stock option grants were material. (SEC's Opposition Re JMOL at 17-19.)

16 The Court finds that the jury was properly instructed as to the proper standard for materiality
17 under the securities laws. Furthermore, in light of the evidence of materiality presented at trial, the
18 Court finds that the jury could reasonably conclude that a reasonable investor would consider
19 Defendant's misstatements important in deciding whether or not to buy or sell Maxim stock.
20 Accordingly, the Court DENIES Defendant's Motion for JMOL or a new trial on that basis.

21 **3. Reliance on September 2008 Restatement**

22 Defendant contends that the SEC improperly relied on Maxim's 2008 Restatement because
23 the document is inadmissible hearsay and encompasses many grants that are not relevant to the
24 present litigation. (Defendant's Renewed Motion for JMOL at 12.) The SEC responds that the
25 Restatement is a business record within the meaning of Fed. R. Evid. 803(d), and the broad scope of

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27 ⁷ (SEC's Opposition to Defendant's Renewed Motion for Judgment as a Matter of Law or a
New Trial at 11-12, hereafter, "SEC's Opposition Re JMOL," Docket Item No. 273.)

1 the Restatement goes to its weight rather than its admissibility. (SEC's Opposition re JMOL at 26-
2 27.)

3 Defendant relies on Paddack v. Dave Christensen, Inc. for the proposition that the results of a
4 "special audit" do not constitute a business record. 745 F.2d 1254, 1258 (9th Cir. 1984). In
5 Paddack, however, the court expressly distinguished between the compliance audit at issue in that
6 case and a "financial statement audit," which the court noted was "generally admissible as a
7 business record of the audited entity under Fed. R. Evid. 803(6)." Id. at 1257 n.3. The Court finds
8 that the Restatement here resulted from a financial statement audit conducted in accordance with
9 regular audit procedures, and it is thus an admissible business record. Furthermore, the Court finds
10 that despite its broad scope, the jury was entitled to conclude from the Restatement that Maxim
11 backdated the nineteen grants at issue. Accordingly, the Court DENIES Defendant's Motion for
12 JMOL or a new trial on that basis.

13 **4. Fifth Amendment**

14 Defendant contends that the SEC failed to demonstrate that the requirements of Doe ex rel.
15 Rudy-Glanzer v. Glanzer⁸ had been met as to each individual instance where the SEC sought an
16 adverse inference based on Defendant's invocation of the Fifth Amendment, and that the Court erred
17 in instructing the jury that it could make an adverse inference based on Defendant's invocation of
18 the Fifth Amendment without also instructing on the requirements of Glanzer. (Defendant's
19 Renewed Motion for JMOL at 13.) Defendant further contends that the Court erred in excluding
20 documents establishing that the SEC drafted a declaration for Maxim CEO Jack Gifford in which
21 Gifford invoked the Fifth Amendment in response to SEC questioning. (Id. at 15-16.) The SEC
22 responds that it presented at trial independent evidence of Defendant's mental state and the dates on
23 which he drafted backdating approval memoranda, so it was proper for the jury to make an inference
24 adverse to Defendant as to those issues. (SEC's Opposition re JMOL at 28.) The SEC also
25 contends that the Court on multiple occasions ruled that the documents Defendant sought to

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27 ⁸ 232 F.3d 1258 (9th Cir. 2000).

1 introduce with respect to Gifford invoking the Fifth Amendment were privileged attorney work
 2 product, and thus they were properly excluded. (*Id.* at 29.)

3 The Court finds that the SEC made a sufficient showing that the Glanzer requirements had
 4 been met to allow the jury to make adverse inferences with regard to Defendant's invocation of the
 5 Fifth Amendment. The Court further finds that the Gifford documents at issue were properly
 6 excluded pursuant to the Court's prior orders. (See Docket Item Nos. 52, 128.) Accordingly, the
 7 Court DENIES Defendant's Motion for JMOL or a new trial on that basis.

8 **5. Sufficiency of the SEC Witnesses**

9 Defendant contends that the testimony of accounting expert Albert Vondra, economics expert
 10 Howard Mulcahey, and percipient witness James Long was insufficient to support the jury's finding
 11 of liability. (Defendant's Renewed Motion for JMOL at 17-18.) As to Vondra, Defendant contends
 12 that his testimony cannot establish materiality as to any specific grant. (*Id.* at 17.) Likewise,
 13 Defendant contends that Mulcahey's testimony as to the Restatement's general effect on the stock
 14 market cannot establish the impact of any particular grant. (Id.) Finally, Defendant contends that
 15 Long was an undisclosed expert witness in electronic discovery under the guise of a fact witness.
 16 (Id. at 18.) The SEC responds that (1) a reasonable jury, faced with evidence of a routine and
 17 systematic backdating scheme could reasonably have found that every grant analyzed by Vondra
 18 was backdated, (2) Mulcahey's testimony is relevant to the effect on investors of news of Maxim's
 19 backdating practices, and the individual impact of any specific grant is irrelevant, and (3) Long was
 20 a percipient witness regarding the metadata in the Equity Edge database.⁹ (SEC's Opposition at 31-
 21 34.)

22 The Court finds that the testimony of Vondra, Mulcahey, and Long are all admissible and
 23 relevant to a material issue in the litigation, and it was proper for the jury to consider those

24 ⁹ The Court finds that the SEC's reliance on US v. Lecroy, 441 F.3d 914, 927 (11th Cir.
 25 2006), is on point with regard to Long's witness status. In that case, the court held that "[j]ust
 26 because [a particular witness'] position and experience could have qualified him for expert witness
 27 status does not mean that any testimony he gives at trial is considered 'expert testimony.'" Id.
 Likewise here, the fact that Long was qualified to testify as an expert in electronic discovery does
 not mean that he testified as an expert witness in this instance.

1 testimony when making their liability findings. Accordingly, the Court DENIES Defendant's
2 Motion for JMOL or a new trial on that basis.

3 **6. Sufficiency of Proof as to Negligence Counts**

4 Defendant contends that the Court erred by allowing the SEC's negligence claims to go
5 before the jury without putting on any evidence of the duty of care owed by a CFO of a public
6 company. (Defendant's Renewed Motion for JMOL at 20.) Defendant further contends that the
7 jury's request for a fuller explanation of the term "unreasonable" in the jury instructions showed that
8 the lack of clarity with regard to the appropriate standard for the negligence claims made a
9 difference. (Id.) The SEC responds that in finding Defendant liable for lying to auditors, the only
10 claim on which the SEC prevailed in which the jury may have found that Defendant acted
11 "negligently," the jury determined that Defendant "knew or should have known" that his actions
12 could result in rendering Maxim's financial reports materially misleading. (SEC's Opposition re
13 JMOL at 35-36.) Thus, Defendant could not have been prejudiced by any lack of evidence of an
14 appropriate negligence standard, or any jury confusion as to that standard. (Id.)

15 The Court finds that there was sufficient evidence presented at trial to support the jury's
16 findings of liability based on Defendant acting intentionally. Thus, any lack of evidence of an
17 appropriate negligence standard for CFOs is moot. Accordingly, the Court DENIES Defendant's
18 Motion for JMOL or a new trial on that basis.

19 **7. SEC Misconduct at Trial**

20 Defendant moves for judgment or a new trial on the ground that the SEC's misconduct was
21 so pervasive in presenting its case, that the jury could not have come to a fair decision. (Defendant's
22 Motion Re Misconduct.) Defendant contends, *inter alia*, that (1) the SEC falsely represented to the
23 jury that Gifford was charged with fraud and accepted responsibility for his misconduct, (2) the SEC
24 improperly suggested to the jury that Defendant was the only alleged participant in the backdating
25 scheme who invoked his Fifth Amendment rights, and (3) the SEC withheld information from its
26 interview with Gifford and then falsely told the jury that it had not withheld any exculpatory
27 evidence. (Id.) The SEC responds that (1) it charged Gifford with non-scienter fraud, which is a
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1 type of securities fraud, and Gifford accepted responsibility by voluntarily paying more than
2 \$800,000 in civil penalties and disgorgement of ill-gotten gains, (2) the SEC's comments with
3 regard to Defendant's invocation of the Fifth Amendment were in line with the Court's prior orders
4 and jury instruction, and there is no inconsistency in accepting a Fifth Amendment declaration from
5 one witness in an investigation while arguing that the jury should draw an adverse inference against
6 another at trial, and (3) the Court on multiple occasions ruled that the SEC's investigatory interviews
7 with Gifford were properly excluded as attorney work product.¹⁰

8 "To warrant reversal on grounds of attorney misconduct, the flavor of misconduct must
9 sufficiently permeate an entire proceeding to provide conviction that the jury was influenced by
10 passion and prejudice in reaching its verdict." Kehr v. Smith Barney, Harris Upham & Co., 736
11 F.2d 1283, 1286 (9th Cir. 1984) (internal citation and quotation marks omitted). "Using some
12 degree of emotionally charged language during closing argument in a civil case is a well-accepted
13 tactic in American courtrooms." Settlegoode v. Portland Pub. Sch., 371 F.3d 503, 518 (9th Cir.
14 2004). "The federal courts erect a 'high threshold' to claims of improper closing arguments in civil
15 cases raised for the first time after trial." Hemmings v. Tidyman's, Inc., 285 F.3d 1174, 1193 (9th
16 Cir. 2002).

17 The Court finds that the SEC's conduct of which Defendant complains essentially amounts
18 to a small number of isolated statements in lengthy closing and rebuttal arguments. The fact that the
19 verdict was not in favor of the SEC on all of its claims demonstrates that the jury carefully weighed
20 the evidence before it and did not merely presume Defendant's liability. Thus, even assuming the
21 SEC committed misconduct during the trial, it was not of the kind or quality that would permeate the
22 entire proceedings and taint the jury's verdict. Accordingly, the Court DENIES Defendant's Motion
23 for Judgment or a New Trial based on trial misconduct.

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27 ¹⁰ (SEC's Opposition to Defendant's Motion for Judgment or New Trial, Docket Item No.
28 271.)

1 **8. Estoppel Defenses**

2 Defendant contends that the SEC took a position at trial with respect to Gifford's role in the
3 backdating scheme inconsistent with the position it took prior to trial. (Defendant's Motion Re
4 Estoppel at 13-15.) More specifically, Defendant contends that in its Complaint, the SEC alleged
5 that Gifford was merely negligent, and used its claim of a lower level of scienter to resist discovery
6 into its investigation of, and discussions with, Gifford. (Id.) Then at trial, after being confronted
7 with evidence of Gifford's integral role in Maxim's backdating practices, the SEC changed position
8 and represented to the jury in its rebuttal argument that it had sued Gifford for fraud, which gave the
9 SEC an unfair advantage since Defendant did not have an opportunity to address the SEC's
10 inconsistent position with the jury. (Id.) The SEC responds that it did not take inconsistent
11 positions because it did, in fact, sue Defendant for securities fraud, and the SEC never took the
12 position that Gifford did not act intentionally.¹¹

13 Judicial estoppel is an equitable doctrine that precludes parties from disavowing their prior
14 representations to the courts. Rissetto v. Plumbers & Steamfitters Local 343, 94 F.3d 597, 600 (9th
15 Cir. 1996). In determining whether judicial estoppel applies, courts typically consider factors such
16 as (1) whether a party's later position is clearly inconsistent with its earlier position, (2) whether the
17 first tribunal accepted or relied upon the prior position, and (3) whether the party now asserting the
18 inconsistent position stands to gain an unfair advantage. New Hampshire v. Maine, 532 U.S. 742,
19 750-51 (2001).

20 The Court finds that the SEC was not precluded from representing to the jury that Gifford
21 played a central role in the backdating scheme, or that the SEC sued him for fraud, merely because it
22 did not allege claims for scienter-based fraud against Gifford in its Complaint. The SEC has wide
23 discretion to determine when and how to settle and litigate its cases, and the fact that the SEC did
24 not allege certain claims against Gifford has no bearing on whether it may allege those claims
25 against Defendant. See SEC v. Berry, 580 F. Supp. 2d 911, 924 (N.D. Cal. 2008) (upholding the

26 ¹¹ (SEC's Opposition to Defendant's Request for Judgment Based on Estoppel Defenses at
27 9-12.)

1 SEC's complaint against general counsel for aiding and abetting a company's fraud even though the
 2 company itself was not charged with fraud). Accordingly, the Court DENIES Defendant's Motion
 3 for Judgment Based on Estoppel Defenses.¹²

4 **B. SEC's Motion for Permanent Injunction and Other Relief**

5 Pursuant to the jury's verdict against Defendant, the SEC seeks the following remedies: (1) an order enjoining Defendant from future violations of the federal securities laws, (2) a permanent
 6 bar on Defendant serving as a director or officer of a public company, (3) a "significant" civil money
 7 penalty, (4) forfeiture of Defendant's bonuses and stock-sale profits pursuant to Section 304(a) of
 8 the Sarbanes-Oxley Act, and (5) disgorgement of Defendant's ill-gotten gains. (SEC's Motion.)

9 The Court will address each of these remedies in turn.

10 **1. Injunction**

11 The SEC seeks to enjoin Defendant from all future violations of the federal securities law.
 12 (SEC's Motion at 9.)

13 Injunctive relief is the primary statutory remedy for violations of the federal securities laws.
 14 15 U.S.C. §§ 77t(b), 78u(d); SEC v. Randolph, 736 F.2d 525e, 529. A district court may grant the
 15 SEC's request for a permanent injunction upon the SEC showing a reasonable likelihood that the
 16 defendant will commit future violations. SEC v. Fehn, 97 F.3d 1276, 1295 (9th Cir. 1996). In
 17 determining the likelihood of future violations, the court should consider the totality of the
 18 circumstances, including: (1) the degree of scienter involved; (2) the isolated or recurrent nature of
 19 the violation; (3) the defendant's recognition of the wrongfulness of the conduct; (4) the likelihood,
 20 given the defendant's occupation, of future violations; and (5) the sincerity of his assurances against
 21 future violations. Id. Past violations may permit an inference that future violations will occur, and

22 ¹² The Court finds Defendant's equitable estoppel contentions equally unavailing. Equitable
 23 estoppel is only applicable where the defendant has reasonably relied on some conduct of the SEC to
 24 his detriment. Heckler v. Cnty. Health Servs. of Crawford County, Inc., 467 U.S. 51, 59-61 (1984).
 25 Furthermore, a federal agency may not be estopped on the same terms as other parties to the
 26 litigation. Id. at 60-61 ("When the government is unable to enforce the law because the conduct of
 27 its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the
 rule of law is undermined."). The Court finds that Defendant here has not made a sufficient showing
 of reasonable reliance on the SEC's conduct to support an equitable estoppel defense.

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1 the fact that the defendant is presently not engaged in any violations does not preclude a court from
2 issuing a permanent injunction. SEC v. Murphy, 626 F.2d 633, 655 (9th Cir. 1980).

3 Here, the Court finds that all of the Fehn factors weigh in favor of enjoining Defendant from
4 future violations of the federal securities laws. First, the jury found that Defendant acted knowingly
5 or with reckless disregard for the truth when he made misstatements in connection with the purchase
6 or sale of securities,¹³ and that Defendant acted “deliberately” when he “falsified a book, record, or
7 account of Maxim,”¹⁴ demonstrating a high degree of scienter. Second, evidence presented at trial
8 demonstrates that Defendant’s backdating practices occurred over the course of a five-year period
9 from 2000 to 2005, and that multiple reports filed with the SEC throughout that time contained
10 materially false or misleading certifications. Thus, Defendant’s violative acts were part of an
11 ongoing pattern of conduct rather than isolated incidents. Third, Defendant has never publicly
12 acknowledged the wrongfulness of his conduct, and at trial continued to pin the blame for Maxim’s
13 backdating troubles on Gifford rather than taking any responsibility for his actions. Fourth,
14 Defendant has indicated that he seeks to continue working in the public accounting field,¹⁵ and thus
15 Defendant’s future employment is likely to place him in a position of responsibility over a
16 company’s compliance with securities laws. And finally, the Court is not aware of any assurances
17 that Defendant has ever provided against future violations.

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¹³ (Verdict at 1-2, Docket Item No. 247.)

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¹⁴ (Id. at 9.)

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¹⁵ In the parties’ Joint Pretrial Conference Statement, Defendant stated that if the SEC failed to convince the jury of his complicity in Maxim’s backdating practices, Defendant could “go back to trying to earn a living to support his family.” (Docket Item No. 134 at 4.) Defendant contends that he never specifically stated that he planned to work in public accounting, and he is not currently employed at a public company. (Defendant’s Opposition to the SEC’s Motion for Final Judgment, “Defendant’s Opposition,” Docket Item No. 277.) The Court finds that, although not explicitly, Defendant’s statement strongly implies that he would like to return to a position similar to the one he had prior to the SEC’s action against him.

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1 Defendant responds that an injunction is unnecessary because the SEC cannot rely solely on
 2 Defendant's past violations to show a reasonable likelihood of future ones,¹⁶ and that Defendant
 3 does not have any prior history of securities law violations. (Defendant's Opposition at 14-15.) As
 4 to the first point, the Court finds that the SEC has presented evidence to support its request for an
 5 injunction beyond the mere fact of past violations. As discussed above in connection with the
 6 analysis under Fehn, the SEC has demonstrated, among other things, that Defendant acted with a
 7 high degree of scienter, that his violative conduct was recurrent, and that he has not recognized the
 8 wrongful nature of his conduct. In support of his contention that an injunction is inappropriate for a
 9 "first offender" such as himself, Defendant relies on SEC v. Johnson.¹⁷ In Johnson, however, the
 10 court found that a permanent injunction was inappropriate in part because the defendant's violation
 11 was an isolated incident that took place over the course of two months "in a career that spanned
 12 more than ten years." Here, on the other hand, Defendant's violative conduct took place with
 13 significant regularity over the course of five years. Thus, the Court finds that the SEC has met its
 14 burden of establishing that a permanent injunction is appropriate.

15 Accordingly, the Court GRANTS the SEC's request for an order enjoining Defendant from
 16 any future violations of the securities laws.

17 **2. Director and Officer Bar**

18 The SEC seeks a bar prohibiting Defendant from serving as a director or officer of a public
 19 company. (SEC's Motion at 11.)

20 A district court "may prohibit, conditionally or unconditionally, and permanently or for such
 21 period of time as it shall determine," any person engaged in securities fraud "from acting as an
 22 officer or director [of a public company] if the person's conduct demonstrates unfitness to serve as
 23 an officer or director." 15 U.S.C. § 78u(d)(2). In determining whether to order a director and
 24 officer bar, a court may consider:

25
 26 ¹⁶ See SEC v. Blatt, 583 F.2d 1325, 1334 (5th Cir. 1978).

27 ¹⁷ 595 F. Supp. 2d 40, 44-45 (D.D.C. 2009).

(1) the “egregiousness” of the underlying securities law violation; (2) the defendant’s “repeat offender” status; (3) the defendant’s “role” or position when he engaged in the fraud; (4) the defendant’s degree of scienter; (5) the defendant’s economic stake in the violation; and (6) the likelihood that misconduct will recur.¹⁸

Here, the Court has previously discussed the recurrent nature of Defendant's violative actions, his high degree of scienter, and the significant likelihood that misconduct will occur, all of which weigh in favor of imposing a director and officer bar. As far as the remaining First Pacific Bancorp factors, the evidence at trial showed that Defendant on multiple occasions misstated the Company's financials, certified false reports to the SEC, and concealed the Company's backdating practices from auditors and the board of directors. While it is clear that the costly financial restatements that Defendant's actions necessitated harmed the Company and caused losses to investors, Defendant reaped only indirect benefits from the backdating scheme, and thus it does not appear that Defendant acted purely out of selfish motives. Thus, the Court finds that the egregiousness factor weighs in favor of a director and officer bar, but the lack of a direct economic stake in the backdating scheme weighs against imposing the harshest possible penalty.

Defendant's role at the time of the fraud also weighs in favor of a bar: Defendant was the Company CFO, and thus the person ultimately responsible for ensuring the accuracy of the Company's financial reports and complying with accounting rules. Although as CEO, Gifford also bears substantial responsibility for the fraud that occurred on his watch, the fact that Defendant was not alone in carrying out the backdating scheme does not lessen his culpability.

¹⁸ SEC v. First Pac. Bancorp., 142 F.3d 1186, 1193 (9th Cir. 1998) (quoting 15 U.S.C. § 78u(d)(2)); see also SEC v. Hilsenrath, 2009 U.S. Dist. LEXIS 58930. In the Sarbanes-Oxley Act of 2002, Congress lowered the SEC's burden in seeking a director and officer bar from showing "substantial unfitness" to serve to only showing "unfitness" to serve. SEC v. Levine, 517 F. Supp. 2d 121, 144-45 (D.D.C. 2007). Based on this reduced burden post-Sarbanes-Oxley, SEC contends that the Court should adopt the unfitness test adopted by the D.C. district court in Levine. In that test, the Court also considers the defendant's acknowledgment of wrongdoing and credibility of the defendant's contrition as unfitness factors. See Levine, 517 F. Supp. 2d at 145-46. Since the Ninth Circuit has not adopted the Levine test, and at least one court in the district has continued applying First Pacific Bancorp after Sarbanes-Oxley's removal of "substantial" from the statutory language, the Court will only consider the First Pacific Bancorp factors here. However, the Court finds that in this case, both tests would yield the same outcome.

1 On balance, the Court finds that a director and officer bar is appropriate, but a permanent bar
 2 is unduly harsh under the circumstances. As the Court noted in Johnson, “a permanent bar against
 3 serving as an officer or director of a publicly held company is far too draconian a remedy” where
 4 Defendant did not actually gain any money from his violation of the Exchange Act. 595 F. Supp. 2d
 5 at 45 (finding that “[g]iven the specific intent with which [the defendant] acted and his
 6 understanding at the time that his actions were very questionable, . . . a five year bar is
 7 appropriate”). Moreover, the absence of any other violations of securities laws in Defendant’s past
 8 weighs against a lifetime bar. See Levine, 517 F. Supp. 2d at 146; SEC v. Stanard, 2009 WL
 9 196023, at *33.

10 In sum, the Court does not find that there is sufficient evidence that Defendant will violate
 11 the securities laws again in the future to permanently deprive him of his career and livelihood.
 12 Furthermore, it appears that Defendant has had difficulty obtaining regular employment since his
 13 resignation from Maxim in January 2007, thus he has already been effectively barred from his
 14 profession for three and a half years. However, considering Defendant’s active participation in a
 15 fraudulent scheme over the course of several years, the Court finds that a director and officer bar of
 16 two years from the date of Judgment is appropriate.¹⁹

17 **3. Civil Money Penalties**

18 The SEC moves the Court to impose “significant” money penalties against Defendant.
 19 (SEC’s Motion at 12-14.) The SEC contends that “Third Tier” penalties are appropriate here due to
 20 Defendant’s repeated violations of the securities laws. (Id.)

21 The court may impose civil monetary penalties against any person who violates the
 22 Exchange Act. 15 U.S.C. §§ 77t(d), 78u(d)(3). Third-tier penalties may be imposed when the

23 ¹⁹ The Court rejects Defendant’s contention that any bar is inappropriate because the SEC
 24 did not seek director and officer bars in its settlements with Gifford and Byrd. (See Defendant’s
 25 Opposition at 18.) “The SEC enjoys discretion in choosing its quarry and how vigorously it pursues
 26 them.” SEC v. Berry, 580 F. Supp. 2d 911, 924 (citing United States v. Batchelder, 442 U.S. 114,
 27 124 (1979)). The SEC is not constrained in seeking a particular remedy with respect to one
 defendant simply because it did not seek the same remedy with respect to others. There are
 legitimate reasons why the SEC may have declined to seek a director and officer bar against Gifford
 and Byrd; all of which are not for the Court to evaluate.

1 violation “involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory
2 requirement [and] such violation directly or indirectly resulted in substantial losses or created a
3 significant risk of substantial loss to other persons.” 15 U.S.C. § 78(d)(3)(B)(iii). The penalty is not
4 to exceed the greater of \$120,000 for each violation, or the “gross amount of pecuniary gain” to the
5 defendant. *Id.*; see 17 C.F.R. § 201.1002 (increasing Third Tier penalty to \$120,000 for conduct
6 occurring after 2001).

7 Here, the jury found Defendant liable for violations involving fraud and deliberate or
8 reckless disregard of regulatory requirements. (See Verdict.) Moreover, Defendant's multiple
9 misstatements and false SEC filings over an extended period of time, resulting in Maxim's delisting
10 from NASDAQ, created a significant risk of substantial loss to investors. Thus, the Court finds that
11 a Third-Tier penalty is appropriate here.

Defendant contends that Defendant's inability to pay militates for a smaller monetary penalty. (Defendant's Opposition at 19-20.) Several district courts have recognized that ability to pay is a relevant consideration when determining the amount of civil penalties to impose. See, e.g., SEC v. Druffner, 517 F. Supp. 2d 502, 513 (D. Mass. 2007) (finding civil penalties not warranted where defendant's total assets worth less than \$30,000 and defendant had an annual salary of about \$30,000); SEC v. Henke, 275 F. Supp. 2d 1075, 1086 (N.D. Cal. 2003) (finding a Third Tier civil penalty of \$100,000 for each of five violations appropriate where defendant showed assets of \$4.2 million). Here, Defendant declares assets far in excess of the \$30,000 that the court found justified a waiver of civil penalties in Druffner.²⁰ Furthermore, since the Court is only imposing a limited director and officer bar, Defendant will have the opportunity to continue earning a living in his chosen profession for years to come. Thus, Defendant's financial situation does not weigh heavily against a significant monetary penalty. However, since Defendant benefitted only indirectly from the backdating scheme, the Court finds that imposing the maximum civil penalty would be excessive.

²⁰ (See Declaration of Christopher B. Campell in Support of Defendant Carl W. Jasper's Opposition to the SEC's Motion for Final Judgment, Ex. B (filed under seal).)

1 Accordingly, the Court finds that under the circumstances here, a monetary penalty of
 2 \$60,000 for each of the six claims involving a culpable mental state where the jury found
 3 liability—counts 1, 2, 4, 5, 6, and 8, for a total of \$360,000—adequately achieves the congressional
 4 purpose of deterring future violations of the securities laws.

5 **4. Forfeiture of Bonuses and Stock-Sale Profits**

6 The SEC moves for an order requiring Defendant to forfeit to Maxim all of the bonuses and
 7 stock-sale profits he received during the relevant time period. (SEC's Motion at 14-15.)

8 “Section 304(a) of the Sarbanes-Oxley Act provides for the forfeiture of certain bonuses and
 9 profits when corporate officers fail to comply with securities law reporting requirements.” In re
 10 Digimarc Corp. Derivative Litigation, 549 F.3d 1223, 1229 (9th Cir. 2008). The relevant provisions
 11 provide:

12 If an issuer is required to prepare an accounting restatement due to the material
 13 noncompliance of the issuer, as a result of misconduct, with any financial reporting
 requirement under the securities laws, the chief executive officer and chief financial officer
 of the issuer shall reimburse the issuer for—

- 14 (1) any bonus or other incentive-based or equity-based compensation received by that
 person from the issuer during the 12-month period following the first public issuance
 or filing with the Commission (whichever first occurs) of the financial document
 embodying such financial reporting requirement; and
- 15 (2) any profits realized from the sale of securities of the issuer during that 12-month
 period.

16 15 U.S.C. § 7243.

17 Here, Maxim restated its financial statements because of its failure to record expenses for in-
 18 the-money stock option grants for the fiscal years ended June 29, 2002, June 28, 2003, June 26,
 19 2004, and June 25, 2005. (See Trial Ex. 457 (Maxim's Form 10-K Report for Fiscal Year ended
 21 June 24, 2006 disclosing restated financials).) Maxim filed the form 10-K Reports that contained
 22 the financial statements that had to be restated on September 25, 2002, September 22, 2003,
 23 September 9, 2004, and September 8, 2005.²¹ Under the plain language of the statute, as Company
 24 CFO, Defendant is required to reimburse Maxim for any bonus or profit from sale of Maxim stocks
 25 during the 12-month period following the filing of each of the 10-K Reports that had to be restated.

26
 27 ²¹ (See Joint Statement of Undisputed Facts ¶¶ 6-9, Docket Item No. 127.)

1 The trial evidence shows that Defendant received the following bonuses during that time period: (1)
2 \$207,466 on December 4, 2003; (2) \$646,447 on November 18, 2004; and (3) \$465,212 on
3 December 15, 2005. (See Trial Ex. 473 (Record of Defendant's Bonus/Commission Information).)
4 Also during this period, on November 10, 2003, Defendant sold 15,000 shares of Maxim stock at a
5 profit of \$550,514. (See Trial Ex. 482 (SEC Statement of Changes in Beneficial Ownership).)
6 Thus, the Court finds that Defendant must forfeit to Maxim \$1,869,639, the total amount he gained
7 from bonuses or Maxim stock sales within a year of the filing of each of the three 10-K Reports that
8 had to be restated.

9 Defendant contends that he is not required to forfeit any bonuses or stock-sale profits under
10 Sarbanes-Oxley because of the limiting effect of the word "first" in Section 304(a). (Defendant's
11 Opposition at 22-23.) Under Defendant's reading of the statute, the first filing that had to be restated
12 during his tenure as CFO was the 10-K Report submitted to the SEC on September 25, 2002. Since
13 Defendant did not profit from any stock sale or receive any bonus subsequent to that filing until
14 November 10, 2003 and December 4, 2003 respectively, he did not make any reimbursable gain for
15 more than twelve-months after the first filing embodying the noncompliance with a financial
16 reporting requirement. In support of his contention, Defendant relies on SEC v. Mercury
17 Interactive, LLC, a case from this district in which the court dismissed the SEC's claim under
18 Section 304(a) because it did not "identif[y] adequately a 'first public issuance or filing' sufficient to
19 identify a twelve-month period for which [defendants] are obligated to repay bonuses and stock
20 profits." 2009 WL 2984769, at *7 (N.D. Cal. 2009).

21 The Court finds, however, that Mercury Interactive is distinguishable because in that case,
22 the defendant's last alleged options grant should have been reported in an August 13, 2002 Form 10-
23 Q, while the SEC based its Section 304 claim on subsequent filings that also failed to disclose the
24 compensation expense. See id., at *6. The court rejected the SEC's contention that the defendant
25 was "responsible for repayment of all bonuses and stock sales in the year following each annual and
26 quarterly financial statement because 'the financial impact of the misconduct is not limited to the
27 very first financial statement following the fraud.'" Id., at *7. In contrast here, backdating of stock
28

1 option grants continued throughout the relevant period, and thus each of the 10-K Reports that had
2 to be restated reflected the first financial statement submitted after new stock options grants were
3 issued that should have been expensed. Thus, unlike in Mercury Interactive, the SEC here does not
4 base its Section 304 claim on the continuing impact of stock option grants that should have been
5 reflected as expenses in Maxim's September 25, 2002 10-K Report, but instead bases it on new
6 stock option grants that should have been reflected as expenses in Maxim's September 22, 2003,
7 September 9, 2004, and September 8, 2005 10-K Reports.

8 Defendant further contends that he is not required to forfeit his bonuses and stock-sale profits
9 because Section 304 only applies when the issuer is "required" to issue an accounting restatement,
10 and the SEC has not shown that Maxim was ever ordered or compelled to do so. (Defendant's
11 Opposition at 23 n.68.) In support of his contention, Defendant relies on SEC v. Shanahan, a case in
12 which the court granted summary judgment to the defendant on the SEC's Section 304 claim
13 because the SEC did not prove that defendant's company was "required to prepare an accounting
14 statement." 624 F. Supp. 2d 1072, 1077-78 (E.D. Mo. 2008). Unlike here, however, in Shanahan,
15 the company never actually restated its financial statements. Id. at 1078. The court held that
16 Section 304 does not apply where there should have been an accounting restatement because of
17 material non-compliance, but none actually occurred. Id. Thus, the Court finds that Shanahan is
18 inapposite in the present circumstances. Moreover, Defendant does not produce any evidence
19 showing that Maxim restated its financial statements for any reason other than being compelled to
20 do so under the securities laws and SEC regulations. Considering the costs that the restatements
21 imposed on Maxim, it appears highly unlikely that the Company would not have issued the
22 restatements if it did not have to.

23 Finally, Defendant contends that he should not have to forfeit his bonuses and stock-sale
24 profits because Gifford and Byrd did not have to forfeit theirs, and selective enforcement of
25 Sarbanes-Oxley would violate Defendant's Due Process rights. (Defendant's Opposition at 22.)
26 Defendant relies on a zoning dispute case in which the court cited a Ninth Circuit opinion for the
27 proposition that "[t]he due process clause also includes a substantive component which guards

1 against arbitrary and capricious government action, even when the decision to take that action is
2 made through procedures that are in themselves constitutionally adequate.” Tyson v. City of
3 Sunnyvale, 920 F. Supp. 1054, 1062 (N.D. Cal. 1996) (internal citation and quotation marks
4 omitted). In Tyson, the court rejected the plaintiffs’ substantive due process argument because they
5 failed to show that the City Council did not have any possible rational basis for its rejection of a re-
6 zoning application. Similarly here, Defendant has not shown that the SEC lacked any legitimate
7 basis for seeking a Section 304 penalty against Defendant but not against Gifford or Byrd, nor has
8 he shown that the SEC’s decision was based on some impermissible discriminatory motive. See
9 United States v. Kidder, 869 F.2d 1328, 1335 (9th Cir. 1989) (“[T]he conscious exercise of some
10 selectivity of enforcement is not in itself a federal constitutional violation so long as the selection
11 was [not] deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary
12 classification.”).

13 Accordingly, the Court GRANTS the SEC’s motion to require Defendant to reimburse
14 Maxim \$1,869,639 pursuant to Section 304(a) of the Sarbanes-Oxley Act.

15 **5. Disgorgement**

16 The SEC moves for an order requiring Defendant to disgorge to the United States Treasury
17 all of his performance-related bonuses, less any amounts forfeited to Maxim pursuant to Section
18 304(a) of the Sarbanes-Oxley Act. (SEC’s Motion at 15-16.)

19 It is well-established in the Ninth Circuit that a “district court has broad equity powers to
20 order the disgorgement of ‘ill-gotten gains’ obtained through the violation of federal securities
21 laws.” SEC v. JT Wallenbrock & Assocs., 440 F.3d 1109, 1113 (9th Cir. 2006); see also SEC v.
22 Rind, 991 F.2d 1486, 1491 (9th Cir. 1993).

23 Here, the Court finds that the civil monetary penalties provided under the Exchange Act and
24 the forfeiture requirements under the Sarbanes-Oxley Act sufficiently deprive Defendant of his ill-
25 gotten gains and deter any future violations of the securities laws without the need for further
26 disgorgement. Thus, the Court declines to exercise its equity powers to require Defendant to give
27 back performance-related bonuses beyond those forfeited under the Sarbanes-Oxley Act.

1 Accordingly, the Court DENIES the SEC's motion to require Defendant to disgorge to the
2 United States Treasury.

V. CONCLUSION

4 The Court DENIES Defendant's Motions for Judgment or a New Trial. The Court GRANTS
5 in part and DENIES in part the SEC's Motion as follows:

- 6 (1) Defendant shall be enjoined from any future violations of the securities laws or
7 regulations;

8 (2) Defendant shall be barred from serving as a director or officer of a publicly-traded
9 company for a period of two years from the date of the Judgment;

10 (3) Defendant shall pay a civil monetary penalty in the amount of \$360,000;

11 (4) Defendant shall reimburse Maxim for bonuses and stock-sale profits in the amount of
12 \$1,869,639; and

13 (5) Defendant is not required to give back performance-related bonuses beyond those
14 forfeited under the Sarbanes-Oxley Act.

Judgment shall be entered accordingly.

18 || Dated: July 21, 2010



JAMES WARE
United States District Judge

United States District Court

For the Northern District of California

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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Dated: July 21, 2010

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy